

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2017-381-A

In Re:

Office of Regulatory Staff's Petition for an)
Order Requiring Utilities to Report the Impact)
of the Tax Cuts and Jobs Act)
_____)

JOINT PETITION FOR REHEARING OR RECONSIDERATION

Palmetto Utilities, Inc. ("PUI") and Palmetto Wastewater Reclamation ("PWR"), pursuant to S.C. Code Ann. §58-5-330 (2015) and 10 S.C. Code Regs. 103-854 (2012), submit the within Joint Petition for Rehearing or Reconsideration and Order No. 2018-308 ("Order") in the above-captioned docket. In support thereof, PUI would respectfully show unto this Honorable Commission as follows:

1. The Order states that the Federal Tax Cuts and Jobs Act ("Tax Act") "reduces the federal corporate tax rate from 35% to 21%" and that this "affect[s] current tax expense and deferred tax accounting methods used by utilities." The Order provides that it adopts the recommendation of the Office of Regulatory Staff ("ORS") that "utilities calculate and defer the effects resulting from the Tax Act starting January 1, 2018." The Order then requires that "beginning January 1, 2018, regulatory accounting treatment is required for all regulated utilities for any impact of the [Tax Act], including current and deferred tax impacts." In order to achieve this requirement, the Order further states that "utilities should track and defer the effects resulting from the Tax Act in a regulatory liability account." Finally, because their operating revenues exceed \$250,000, the Order states that "the issue will be addressed in the next rate case or other proceeding" involving PUI or PWR.

2. To the extent the Order requires that PUI and PWR deduct from allowable operating expenses (or reduce increases in allowable operating revenues) by the amounts reflected in the required regulatory liability account, or adjust allowable accumulated deferred income tax (“ADIT”), from and after January 1, 2018, in a future ratemaking or other proceeding, such a requirement is unlawful and invalid for the following reasons:

- (a) Such a requirement constitutes retroactive ratemaking contrary to South Carolina law as its effect is to require a refund of lawfully collected rates to customers. *See S. C. Electric & Gas Co. v. Public Service Commission*, 275 S.C. 487, 491, 272 S.E.2d 793, 795 (1980) (holding that “[t]he Commission has no more authority to require a refund of monies collected under a lawful rate than it would have to determine that the rate previously fixed and approved was unreasonably low, and that the customers would thus pay the difference to the utility”). *See also Porter v. South Carolina Public Service Com’n*, 328 S.C. 222, 234, 493 S.E.2d 92, 99 (1997) (observing that “[i]n *S.C. Electric & Gas Co. supra*, we held the Commission could not order a refund for excess revenue collected under a past-approved rate because this would violate the rule against retroactive rate-making” and that “there is no violation of the rule against retroactive rate-making where the reduction sought is *prospective only*”).
- (b) Such a requirement denies PUI and PWR due process of law as it effectively reduces a lawful rate without notice and an opportunity to be heard. *See* S.C. Const. art. I, §22.
- (c) Such a requirement is unlawful as it effectively reduces PUI’s and PWR’s currently approved rates on and after January 1, 2018. A reduction in these lawful rates may only be imposed prospectively and after a hearing pursuant to S.C. Code Ann. §58-5-290. *See Porter, supra*.

(d) Such a requirement constitutes a taking of private property (i.e., the revenues collected by PUI and PWR pursuant to lawful rates) for private use prohibited by S.C.. Const. art. I, §13 as it effectively requires that monies belonging to PUI and PWR be given to their customers.

3. The Order necessarily finds that a just and reasonable utility rate may be determined with reference to a single expense, without consideration of the other expense components and authorized revenues which are approved by the Commission. This is impermissible as the Commission is required to set rates which allow a utility to recover all of its expenses of operation and earn an allowable return. In setting just and reasonable rates, the Commission is required to approve revenues and an operating margin within a reasonable range. *See Seabrook Island Property Owners Ass'n v. S.C. Public Service Com'n*, 303 S.C. 493, 401 S.E.2d 672 (1991). When approving allowable revenues, the Commission “must authorize sufficient revenue to afford utilities the opportunity to recover expenses.” *See Hamm v. Public Service Com'n*, 310 S.C. 13, 16, 425 S.E.2d 28, 30-31 (1993). The Commission may not determine the reasonableness of rates by reference to a single expense (here, corporate income taxes). All expenses and the revenues necessary to meet the approved return must be considered together.

4. To the extent the Order is intended to limit “the effects resulting from the Tax Act” to decreases in the Federal income tax rate applicable to PUI and PWR but does not take into account other provisions of the Tax Act which may cause increases in their Federal income tax, it improperly denies PUI and PWR the right to recover a portion of their operating expenses. *See Hamm v. Public Service Com'n, supra*.

For all of the foregoing reasons, PUI and PWR submit that the Commission should (i) rehear or reconsider the Order, (ii) reject ORS’s recommendations which gave rise to same, (iii) find that **all** effects of the Tax Act on their allowable expenses and revenues may be determined only in the context

of a rate relief proceeding in which all revenues and expenses are considered in setting a just and reasonable rate, and (iv) grant them such other and further relief as is just and proper.

Respectfully submitted,

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This 14th day of May, 2018
Columbia, South Carolina